(2014) 02 PAT CK 0039

In the Patna High Court

Case No : LPA No. 243 of 2011 in C.W.J.C. No. 2130 of 2006 and IA Nos. 1044 and 1045 of 2011 in LPA No. 243 of 2011

The State of Bihar APPELLANT

Vs

Sanjay Kumar RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 3 PLJR 43

Hon'ble Judges : Rekha M. Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Shivaji Nath and Rajesh Kumar, Advocate for the Appellant; Sunil Kumar, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.

I.A. No. 1045 of 2011

1. Delay of 246 days occurred in preferring the Letters Patent Appeal is condoned. Interlocutory Application stands disposed of.

LPA No. 243 of 2011

2. This Appeal under Clause 10 of the Letters Patent has been preferred by the respondent-State of Bihar against the order dated 16th February, 2010 passed by the learned Single Judge in CWJC No. 2130 of 2006.

3. One Ramsidh Singh a retired employee of the Bihar State Small Scale Industries Corporation Limited (hereinafter referred to as ''the Corporation'') had approached this Court under Article 226 of the Constitution in the above CWJC No. 2130 of 2006 to claim pension from the State Government. According to the writ petitioner, he was initially appointed as a Skilled Artisan (Fitter) in 1959. After serving the State Government for around two years, his service was transferred to the Corporation. After serving the Corporation for full term he

retired from service in 1989. The petitioner was, therefore, entitled to receive pension from the State Government.

4. The Petition was contested by the State Government. According to the State Government, the writ petitioner was temporarily appointed as a Skilled Artisan under the Scheme Model Black Smithy Centre, Bhagalpur, for a consolidated pay of Rs. 100/- per month. On formation of the Corporation, the Scheme was transferred to the Corporation with the staff, assets and liabilities of the State. The petitioner was since then in continuous service of the Corporation till the date of his retirement in 1989. He received the terminal benefits including the amount of contributory provident fund from the Corporation. Neither the writ petitioner was in service of the State Government nor did he serve the State Government in pensionable service. He was, therefore, not entitled to the pension from the State Government.

5. Pending the Writ Petition, the petitioner Ramsidh Singh died. The Petition was pursued by his son Sanjay Kumar, the present respondent.

6. The learned Single Judge has, following the judgment in the matter of Upendra Thakur vs. State of Bihar & Ors. (CWJC No. 13821 of 2004 disposed of on 7th March, 2005), allowed the writ petition, has directed, the State Government to pay pension to the petitioner. The learned Single Judge has further directed that the amount of contributory provident fund received by the petitioner be adjusted against the amount of pension payable to the petitioner. For this purpose, the learned Single Judge has directed that the entire service of the petitioner shall be treated as under the State Government. Therefore, this Appeal.

7. We have heard the learned advocates. In the matter of Upendra Thakur, an employee of the Bihar Industrial Area Development Authority was granted a similar relief by a Bench of the learned Single Judge of this Court.

8. As we have noted hereinabove, the writ petitioner was temporarily appointed on a consolidated pay. His service was transferred in 1962 to the Corporation alongwith the scheme under which he was appointed and the assets and liabilities of the State Government. Thus, the transfer of the petitioner''s service to the Corporation was complete. Since, then the petitioner did not have the lien in the service of the State Government. The master and servant relationship between the State Government and the petitioner stood severed on such transfer. After the said order of transfer the petitioner could not have any claim against the State Government.

9. While in the service of the Corporation, the petitioner was entitled to contributory provident fund which the petitioner did receive at the time of his retirement in 1989. Having received the amount of contributory provident fund the petitioner could not have claimed pension even against the Corporation, least against the State Government. The Petition filed after an unexplained delay of 17 years could not have been maintained on the grounds of delay, laches and

acquiescence.

10. For the aforesaid reasons, we hold that the claim of the petitioner is totally frivolous and misconceived. Such a claim could not have been entertained under Article 226 of the Constitution.

11. Appeal is allowed. Order dated 16th February, 2010 made by the learned Single Judge in CWJC No. 2130 of 2006 is set aside. CWJC No. 2130 of 2006 is dismissed. I.A. No. 1044 of 2010 (sic--2011?) stands disposed of.

